IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 453 OF 2003

The State of Maharashtra ... Applicant

Vs.

Balchandra Trimbak Kharwandikar ... Respondent

(Orig. Accused)

Mrs. M.H. Mhattre, APP, for the Applicant-State.

Shri Indrajeet Kulkarni for Respondent No.1.

CORAM: J.H.BHATIA,J.

DATE : 12th June, 2007.

P.C.

1. Heard Mrs. Mhatre, learned APP and Mr. Kulkarni for Respondent-accused.

2. The prosecution seeks leave to prefer an appeal against acquittal of the accused-respondent for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

3. Admittedly, the respondent-accused was working as an Auditor - Grade I with District Special Auditor's

Office at Thane. He is a public servant. According to the prosecution, audit of Bharat Sahakari Bank Ltd., Thane, was going on since May 1993. Several irregularities were found during the audit. According to the prosecution, one month prior to the lodging of the report with the Anti Corrupton Bureau, the accused had demanded an amount of Rs.25,000/- in order to give "A" Grade to the Bank in the said audit report.The demand was repeated on certain occasions. On 6.7.93, the accused went to the Bank and repeated the demand of Rs.25,000/-. As this demand could not be satisfied by the Co-operative Bank, at the instance of Dr. Bedekar, Chairman of the Bank, Suhas Khandkar, the then Manager of the Bank approached the Anti Corruption Bureau and lodged a report on 7.7.93. After completing the formalities, trap was laid and the officers of the Anti Corruption Bureau along with the complainant and panch witnesses went to the office of the Bank.Suhas Khandkar handed over tainted notes of Rs.25,000/- to the accused which he received. After getting the signal, the raiding party came and the amount of Rs.20,000/- was recovered from the accused.

4. The defence of the accused was that he was to go to pilgrimage and he felt it risky to take the amount of Rs.20,000/- in small notes of denominations of Rs. 50/- and 100/- with him and therefore, he had handed over the

amount to Suhas Khandkar to give him currency notes of the denomination of Rs.500/- each so that the amount could be carried conveniently.

5. The prosecution evidence reveals that when Suhas Khandkar gave tainted notes of Rs.25,000/- to the accused, he counted the notes and found that it was an excess
amount and he retained Rs.20,000/- with him and returned Rs.5,000/- to Suhas Khandkar. This was against the allegation made in the complaint and as per the plan and therefore, Suhas Khandkar was perplexed.

6. The learned trial Court noted that this conduct of the accused in counting the notes and after counting, returnig the amount of Rs.5,000/- to Suhas Khandkar on the ground that the amount was excess, corroborates his plea that he had given the amount of Rs.20,000/- for taking change and had not received the amount as bribe. The learned trial Court noted several other circumstances and improvements in the prosecution case. The learned trial Court noted that Dr. Bedekar, Chairman, with whom demand was made was not examined. He also noted that the accused had not taken any objection or made any querry about the presence of the panch witness, when the amount was offered to him. In view of these circumstances, the trial Court found that

possibility could not be ruled out that the accused was falsely implicated because Dr. Bedekar was apprehending that in view of certain irregularities found in the audit, the Bank would be given "C" Grade and it was not favourable for the management.

7. Taking into consideration the circumstances, the conduct of the parties and particularly of the accused, I find it difficult to take a view differnt from the view taken by the trial Court. Therefore, leave to prefer appeal is refused. The Appeal stands dismissed.

(J.H.BHATIA,J.)